

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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United States of America,	)	
	)	
Plaintiff,	)	
	)	13-07383M
vs.	)	Phoenix, Arizona
	)	November 18, 2013
Tommy C. Constantine,	)	3:07 p.m.
	)	
Defendant.	)	

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BEFORE: THE HONORABLE BRIDGET S. BADE, MAGISTRATE JUDGE

TRANSCRIPT OF PROCEEDINGS

DETENTION HEARING - PART 2

APPEARANCES:

For the Government:

U.S. ATTORNEY'S OFFICE  
By: **Dominic William Lanza, Esq.**  
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Phoenix, AZ 85004

For the Defendant Tommy C. Constantine:

WILENCHIK & BARTNESS, P.C.  
By: **Dennis I. Wilenchik, Esq.**  
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P R O C E E D I N G S

(Called to the order of court at 3:07 p.m.).

THE COURT: Good afternoon. You may be seated.

THE CLERK: Magistrate docket 13-7383. *United States of America v. Tommy C. Constantine*. This is a continuation of a detention hearing.

MR. LANZA: Good afternoon, Your Honor. Dominic Lanza on behalf of the United States.

THE COURT: Good afternoon, Mr. Lanza.

MR. WILENCHIK: Good afternoon, Your Honor. I haven't been here before. I was out of town. Dennis Wilenchik on behalf of Mr. Constantine along with Carmen Chenal.

THE COURT: Good afternoon, Mr. Wilenchik. Good afternoon, Ms. Chenal. Good afternoon, Mr. Constantine.

Mr. Wilenchik, did you file your Notice of Appearance?

MS. CHENAL: Oh, yes. We did that last week.

THE COURT: On Friday?

MS. CHENAL: Yeah, both for Dennis and myself, yes.

MR. WILENCHIK: Does the Court not have that, Your Honor? If not, I can get the office to send one over.

THE COURT: No. I assume you're correct that it's in the docket. I just haven't received a copy of it or seen a copy of it, so I just wanted to ensure that that happened.

1           This is a continuation of a detention hearing that  
2 began last Friday, November 15th, and proceeded for close to  
3 an hour on Friday. And it's been continued at the defendant's  
4 request.

5           Ms. Chenal, I have received a new witness and exhibit  
6 list that you submitted and a binder with those proposed  
7 exhibits.

8           I have also received your motion for one of your  
9 witnesses to testify telephonically. I granted that motion  
10 somewhat reluctantly, I must tell you, because that witness  
11 was here present in the courtroom on Friday and you had the  
12 opportunity to call her.

13           And then I received an e-mail through my Judicial  
14 Assistant asking to have two more witnesses testify  
15 telephonically.

16           I have not made any decision on that issue. When we  
17 discussed the presentation of witnesses on Friday, you had  
18 responded to my questions that Mrs. Constantine, Mrs. Kiki  
19 Constantine, the defendant's mother, would testify as to the  
20 property that the defendant has proposed to post as security  
21 for a bond.

22           You did not tell me what Ms. Jennifer Constantine  
23 would testify as to, but you identified your remaining  
24 witnesses as character witnesses and indicated that perhaps  
25 you didn't need them to testify because you had character

1 letters.

2 So at this point I don't know the nature of the  
3 intended testimony of these individuals or whether it will be  
4 necessary to have them testify telephonically or not and you  
5 may not have determined that yet at this point.

6 And so my conclusion was to continue with the hearing  
7 and make that decision as we come to it, should it be  
8 necessary for you to present those witnesses or should you  
9 decide that you would like to present those witnesses. I'm  
10 certainly not precluding you from doing that yet at this  
11 point.

12 We had heard argument and proffer from the  
13 government. Then Ms. Chenal presented argument and proffered  
14 various facts. And that's where we concluded on Friday.

15 The defense was still making their presentation.  
16 Mr. Wilenchik, are you going to be presenting today?

17 MR. WILENCHIK: Yes, I am, Your Honor.

18 THE COURT: How would you like to proceed?

19 MR. WILENCHIK: You know, in the interests of time,  
20 Your Honor, I think I would like to establish first the issue  
21 on the house.

22 If the Court has any questions on that, I can call --  
23 again, because we have short time, I can call Constantine's  
24 mother and talk about the house. I talked informally to  
25 Mr. Lanza about it; asked any questions he had about that.

1           I think, without speaking for him, that those have  
2       been sort of resolved. He may have some additional issues,  
3       but if the Court, though, has any questions about that  
4       security, I would be happy to spend the time. Otherwise, I  
5       would rather call with the time we have Mr. D'Ambrosio, who I  
6       think is a more pertinent witness to the actual substance of  
7       why we are here.

8           THE COURT: All right. Well, let me tell you this,  
9       Mr. Wilenchik.

10          My reaction to the information regarding the property  
11       to be posted is that I'm going forward under the assumption  
12       that it is worth the stated amount of \$500,000 and that there  
13       is that amount of equity in the property.

14          I'm not asking that you prove that up for purposes of  
15       today's hearing.

16          MR. WILENCHIK: Okay.

17          THE COURT: I'm assuming that that is, indeed, the  
18       case.

19          As you know, when property is posted to secure a  
20       bond, there are quite a few steps involved and a great deal of  
21       paperwork that has to be filled out. And you have already  
22       begun the process of conferring with Mr. Lanza. But the  
23       government has to be satisfied as to the amount of the equity.

24          We don't do it very often, because it is very  
25       cumbersome and difficult. The last time I did it, the

1 property was not in Arizona and it took about a month to have  
2 all the signing accomplished, the courtesy signing in another  
3 district, and finalized the paperwork.

4 Clearly, we can do it much faster now because the  
5 property is here.

6 MR. WILENCHIK: Yes.

7 THE COURT: But I don't think it's something that  
8 could be accomplished today. And so for that reason, I'm just  
9 assuming that the property exists, it's worth the amount you  
10 stated, the equity is there.

11 MR. WILENCHIK: Right.

12 THE COURT: And so should that be my ultimate  
13 decision --

14 MR. WILENCHIK: Okay.

15 THE COURT: -- we will go forward with how to secure  
16 the property.

17 MR. WILENCHIK: I appreciate that very much, Your  
18 Honor. The only other point I wanted to raise on those kinds  
19 of issues before we get rolling here is the issue of, you  
20 know, sort of to cut to the chase, if the Court decides to  
21 release Mr. Constantine -- I believe there's lots of reasons  
22 why the Court should do that -- there is the possibility of an  
23 ankle bracelet -- it was called to my attention -- that can  
24 confirm his whereabouts at any given time if there is any  
25 concern about that.

1 I'm here today, Your Honor, and I apologize for not  
2 being able to be here Friday. I was out of town on a prior  
3 engagement. But I can tell you for what it's worth since I  
4 haven't had the opportunity to speak that I have known this  
5 man for a good period of time.

6 I have represented him on various things, including a  
7 civil matter related to the matter that we won and got  
8 attorneys' fees for. I am happy to discuss that later, but I  
9 would just indicate at this point that I'm more than happy to  
10 proceed however the Court wishes.

11 If the Court wishes questions asked, I'm happy. I  
12 think I know a lot about these issues to answer the Court. He  
13 has been working with the federal authorities in the Southern  
14 District along with an Attorney Ed Little from Hughes Hubbard  
15 there, a very large law firm, for years, at least three to  
16 four years to my knowledge; cooperating fully and providing  
17 all information to them.

18 For whatever reason they chose not to proceed. And  
19 then these alleged victims, two of whom work for a guy who is  
20 basically what I would call a serious enemy of Mr. Constantine  
21 in Mexico, who are the two complainants that the newspaper  
22 features all the time, these two individuals basically set out  
23 to stir up the U.S. Attorney in the Central District of Long  
24 Island who really had no history with this case who is behind  
25 this now. And I can tell you that from personal knowledge and

1 have confirmed this with Mr. Little as well.

2 I just want to say that Mr. Constantine not only  
3 voluntarily traveled at his own expense to New York to meet  
4 with the U.S. Attorney previously, but also had a CPA who did  
5 an audit of these books go and meet with or talk with -- I  
6 can't swear that he met with them. I think he talked with  
7 them over the phone.

8 I'm not certain of that about whether he actually  
9 physically met. But I know he provided all documentation.  
10 And I know he spoke with the U.S. Attorney in the Southern  
11 District that has not brought charges and has been  
12 investigating this for years.

13 So there was a civil case in the Central District  
14 that I was involved in with the same individuals. That  
15 dropped out of sight. As I said, we won the civil case that  
16 they brought to try to take over Eufora. We won that and got  
17 attorneys' fees of \$50,000.

18 Mr. Constantine even offered, through our auspices,  
19 to -- indirectly to have these people basically be paid back  
20 their money minus their attorneys' fees for whatever they  
21 claimed their investment in Eufora was since it was never a  
22 direct investment.

23 And they rejected it and they continued to work,  
24 apparently, on the sidelines, not known to us, with the  
25 Central District of New York, who never even contacted



1 Mr. Constantine, never gave an opportunity to even surrender,  
2 who never even talked to him or cared to talk to him, but  
3 instead chose to get some headlines in New York in the Daily  
4 News.

5 Now, that's the facts here, Judge. And I'm happy to  
6 call Mr. D'Ambrosio as my first witness who was one of the  
7 defendants in that case who works at Eufora and has worked  
8 side-by-side with Mr. Constantine for years at Eufora.

9 Mr. Constantine lives within a five-mile radius, I  
10 believe, of those offices; attends work there every single day  
11 trying to build the company up, which these gentlemen who  
12 basically claim to be the victims here, have no direct  
13 interest in, never invested in directly, but rather, through  
14 Mr. Kenner and with no record of who invested in it. And  
15 that's what we tried to get to the bottom of in the civil case  
16 and we succeeded in that regard.

17 I believe this Complaint is frivolous. I believe  
18 that regardless of what the Court ultimately concludes on that  
19 or whoever concludes on that, a jury, to claim that  
20 Mr. Constantine is somehow a flight risk is really, really  
21 stretching it.

22 He's not a flight risk. I can tell you that for a  
23 fact. I can tell you he has a pregnant girlfriend/fiance. I  
24 can tell you he lives up in Silver Leaf in a rented house. He  
25 puts his mother's address down as a permanent address because

1 he does not own the house.

2 He has always done what he said he would do. He has  
3 been in a trial with me in Florida. He has attended that  
4 trial every day. He has filed a bankruptcy and attended  
5 dutifully. He has an adversary proceeding next month in that  
6 matter which I don't know what the status of that will be now  
7 and I have every reason to believe he will show up.

8 I have every reason to believe in this case he  
9 believes that he's in the right, that these people are  
10 harassing him, that there is no substance to these claims  
11 against him, that he intends to win this claim in front of a  
12 jury or on motion, and that is sincerely what he contends in  
13 this case and we contend.

14 There is just no good that can be done here other  
15 than to be punitive to haul him back to New York where he does  
16 not reside and put him in jail so that the prosecutor -- no  
17 offense to Mr. Lanza, I don't personalize this to him  
18 whatsoever -- but that the New York prosecutor can get  
19 whatever pound of flesh she wants to get.

20 That's the facts. And we were never given an  
21 opportunity to attend any grand jury, to give a statement, to  
22 do anything. So that's where we sit right now, Your Honor, in  
23 shock when he was arrested.

24 And I have consulted with his New York counsel and  
25 can avow to the Court that that's exactly where he sits;

1 totally in shock that this was even brought by some other U.S.  
2 Attorney. And I don't even think the two U.S. Attorneys  
3 communicated with one another and even know that. I don't  
4 think the Southern District of New York attorneys who have  
5 been working this file for years has had any clue that this  
6 matter was going to be brought. I guess that. I don't know  
7 that for a fact, but I would suspect that because they didn't  
8 bring any charges.

9 The former police officer in question who's the one  
10 who is sort of, what I call, the "ring leader" is the one who  
11 actually, I believe the evidence will come out, got the U.S.  
12 Attorney in Central District of Long Island in Islip where I  
13 believe he resides to bring this claim.

14 But I can tell you, Judge, that the bottom line for  
15 what's in front of you, I believe, is that he's appeared in  
16 every hearing he has ever been involved in in the last seven  
17 years or more. We have defended every case that he has been  
18 involved in in the last several years; always appeared,  
19 including in New York, including in Florida, including in  
20 Bankruptcy Court.

21 He has had no dealings with these hockey players  
22 directly in this matter except to try to resolve this matter  
23 and settle it with them and they have rejected it because  
24 they're working with the government and trying to basically  
25 get him and Mr. Kenner apparently as well.

1 I can't speak for Mr. Kenner, but I can speak for  
2 Mr. Constantine. And I can tell you that he had a great idea  
3 for this company Eufora. He has been building it with people  
4 like Mr. D'Ambrosio and others, never with any intent to steal  
5 a nickel from any of these people. Doesn't even really know a  
6 lot of these people.

7 And yet they claim they own Eufora and tried to take  
8 it over. That's what this is all about. And the fact that  
9 they now work for his known enemy Mr. Jowdy in Mexico tells  
10 you, I think, all you need to know about what really is going  
11 on here.

12 So why they want him back in New York is pretty  
13 obvious. They want him back in New York so he can't really  
14 defend himself. He has to hire an attorney back in New York  
15 full time that's going to be very expensive and costly.

16 I am fully familiar with these matters. I can't --  
17 although I'm licensed in the Eastern District of New York, as  
18 well as New York in general, I cannot obviously travel back  
19 there all the time to deal with this matter and meet him in  
20 jail and so forth back there.

21 He needs to be home with his wife, his family  
22 surrounding him, and I don't say that to gain any sympathy.  
23 It's just a fact. He needs to defend this case fully.

24 I will agree to any kind of reasonable restriction on  
25 him. There is no way he's going and flying out to other

1 countries or whatever this other U.S. Attorney says, because I  
2 can tell you I'm fully familiar with all those operations. I  
3 can tell you he has no ownership interest, to my knowledge,  
4 SetJet.

5 SetJet -- I was just on it this past week -- does not  
6 fly out of the country right now and has no plans right now to  
7 fly out of the country. The only place it might fly would be  
8 Cabo. And it hasn't -- that the owner who I did talk to is  
9 absolutely committed and Mr. Lassetter will tell you that -- I  
10 think we sent the letter -- that there's no way that he's  
11 going to allow his pilots or planes to be directed out of this  
12 country. It is just not going to ever happen.

13 And the Falcon which he has been managing, the Falcon  
14 10 has now been seized for whatever crazy reason by the  
15 government. I don't even understand that, because  
16 Mr. Constantine doesn't own the Falcon. It's bizarre to me.  
17 There are other individuals that are being hurt by that.

18 But putting that aside for the moment, the other two  
19 Falcons are down. They're not even flying. And they are  
20 going to require substantial maintenance and remediation. And  
21 the owners of those planes are not going to have  
22 Mr. Constantine fly out of the country in them, even if they  
23 could.

24 So he is just not a realistic flight risk, Your  
25 Honor, is just the bottom line here. And this case is just

1 kind of a ridiculous case, quite honestly. There is no  
2 substance to this case. I can tell you that because I have  
3 been involved in it for years.

4 And how they got a U.S. Attorney to bring it, God  
5 only knows, after they couldn't make it on a civil case, but  
6 that's where we are.

7 I'm happy to surrender his passport to the Court  
8 which I have with me. Happy to do anything, like I said,  
9 reasonably that would restrict him. You know, he can check in  
10 every week or every day for all I care.

11 And he's working a legitimate enterprise. He will  
12 agree not to fly anywhere outside the country or wherever you  
13 want him not to fly and will continue to work, hopefully, at  
14 Eufora and build that company up, which will benefit  
15 everybody.

16 And if for whatever crazy reason the victims --  
17 alleged victims in this case think that they're entitled to a  
18 piece of that, it would only help them for him to do that.  
19 But you see the reason they really don't want him there is  
20 what I said. They will try and take over Eufora in civil  
21 court. That's what they did.

22 They tried to claim Eufora as their company because I  
23 understand it's a very valuable company. That's why they  
24 don't want him here and that's what's going on here. And if  
25 there's anything else going on, I haven't heard it and I would

1       like to hear it.

2               He's lived in this community, Your Honor, since 1995.  
3       He's done nothing Criminal in this jurisdiction. He did have  
4       a prior drug-related offense which he told me about the first  
5       time I met him and he tells everybody about. There's a long  
6       story with that which I won't bore you with. But if the Court  
7       wants to hear it, I would be more than happy to share it. He  
8       served his time and he learned his lesson when he was a young  
9       man and that's it. He doesn't do drugs and he doesn't engage  
10      in, you know, those kinds of activities.

11             There's no way he's going to let his poor mother  
12      suffer the consequences of putting up a bond if that's what  
13      the Court does. But I don't even think that's even necessary.  
14      He's a member of the community and he's a good member of the  
15      community.

16             This is an incident that I'm telling you has been  
17      blown out of proportion by the news, as is typical, because  
18      these guys look like -- are playing the victim. They're not  
19      victims. They're aggressors. They are very sophisticated  
20      individuals who knew exactly what they were doing with  
21      Mr. Kenner.

22             Mr. Kenner invested money with Mr. Constantine and  
23      that's all she wrote. And Mr. Constantine has a right to have  
24      Mr. Kenner invest that money. But then to say that somehow  
25      Mr. Constantine is behind any of this is just absurd. He had

1 no contact with any of these people except on one limited  
2 situation involving Global Defense Fund.

3 And as far as he knew, the money was being put in  
4 California in an attorney's trust account. There's no misuse  
5 of the plane money. The plane was foreclosed on. And a  
6 hockey player, unrelated to these gentlemen, bought the plane  
7 and leases it out to the Falcon Partners who own it, that  
8 Mr. Constantine manages, and has no ownership interest in.

9 That's it. It's just that simple, Judge. And I,  
10 again, am happy to answer anything for the purposes of the  
11 loan, but I wasn't able to be here and I apologize for that.

12 But that's what I know about this matter. I don't  
13 think there is any question that this man is not a flight risk  
14 and is not going out of this country. He will be in New York.  
15 He will defend himself. And whether it's through me, a public  
16 defender, or whomever, he will be defending himself. And  
17 there is no reason that the Court, that I can truly  
18 understand, would want to detain this man in New York other  
19 than just for the pleasure of these people who are out to get  
20 him.

21 That's it, Judge. And I apologize for being lengthy,  
22 but I think it's important I tell you what I do know since I  
23 have had personal contact with him and not Ms. Chenal. I will  
24 answer any questions you have, because I'm pretty well versed  
25 on all this.



1           THE COURT: All right. I do need to advise you that  
2 we have a Notice of Appearance that was filed for Ms. Chenal  
3 on November 14th, but we don't have one yet for you,  
4 Mr. Wilenchik. If you could file one, tomorrow would be fine.

5           MR. WILENCHIK: Sure. Thanks, Judge. I didn't  
6 realize that.

7           THE COURT: And the other -- I do have some questions  
8 for you.

9           MR. WILENCHIK: Please.

10          THE COURT: Some of this confusion likely arises out  
11 of the process where there's an interview with Pretrial  
12 Services.

13          MR. WILENCHIK: Yeah.

14          THE COURT: And sometimes the information can be a  
15 little confused, so I want to make sure I understand his  
16 employment.

17                What I understood from the Pretrial Services' report  
18 was that he was employed with an entity called Arizona Falcon  
19 Partners and that he was a manager of a fleet of airplanes and  
20 that he had been employed there since 2009 earning \$5,000 a  
21 month.

22                Now, at Friday's hearing the government, as part of  
23 their presentation, pointed to an alleged inconsistency  
24 between that information and information in Mr. Constantine's  
25 bankruptcy proceeding in which he stated -- at least as the

1 government avows it -- that he didn't have any income for the  
2 previous couple of years.

3 And then the Pretrial Services' report indicates that  
4 he's the founder of Eufora?

5 MR. WILENCHIK: Yes. Arizona Eufora.

6 THE COURT: And has been the manager of that business  
7 but has not made any money in the business.

8 So my impression from the information I had until  
9 your presentation was that his employment was as the manager  
10 of a fleet of planes and that he -- that was the source of his  
11 income. And that while he was attempting to build up the  
12 Eufora business, it was not yet a source of income.

13 MR. WILENCHIK: I believe that's correct.

14 THE COURT: But your comments here today confuse me  
15 here a little as you talked about --

16 MR. WILENCHIK: Okay. I'll clarify.

17 THE COURT: I thought Arizona Falcon Partners was an  
18 entity and you talked about Falcons as if they were specific  
19 aircraft. So can you clarify his connection to the Arizona  
20 Falcon Partners, if any, his employment, and his ability to  
21 access aircraft?

22 MR. WILENCHIK: Sure. And, again, this is based on  
23 what I know. I'm happy to get further information from him to  
24 clarify. I don't want to say anything that's inaccurate. And  
25 by the way, if I do, just let me know, okay?

1           In fact, I would be happy if the government would  
2       agree on this limited issue to have him testify to this if you  
3       would understand it on this limited issue.

4           MR. LANZA: I won't want to expand it.

5           MR. WILENCHIK: Okay. Then would that be okay for  
6       the Court just have him answer these questions?

7           THE COURT: Sure.

8           MR. WILENCHIK: It would be better than coming from  
9       me.

10          THE COURT: You can do it however you wish,  
11       Mr. Wilenchik. You can have him placed under oath and  
12       Mr. Lanza has represented that the government won't go beyond  
13       this issue.

14          MR. WILENCHIK: Yes. Right.

15          THE COURT: But, of course, you do recognize that he  
16       is under oath and this matter is recorded?

17          MR. WILENCHIK: I understand that.

18          THE COURT: And he's giving up his right to remain  
19       silent and this information could be used against him.

20          Alternatively, if you want to consult with him and  
21       get the information and proffer it, we can proceed that way as  
22       well.

23          MR. WILENCHIK: Do you have a problem?

24          TOMMY C. CONSTANTINE: No.

25          MR. WILENCHIK: We'll put him under oath and he can

1 answer those questions, because I think he can answer a lot  
2 better and quicker than I can. I have answers for it, but I  
3 think you would like to hear it from him, if you could, and I  
4 think that's the way to do it.

5 THE COURT: All right. Well, have him come to the  
6 lecturn at least for now.

7 Mr. Lanza, do you have any objection to Mr.  
8 Constantine speaking from the lecturn as opposed to the  
9 witness stand?

10 MR. LANZA: No objection.

11 MR. WILENCHIK: Okay.

12 **(DEFENDANT SWORN)**

13 THE COURT: And, Mr. Constantine, you just heard me  
14 talking to your lawyer, and I will advise you specifically as  
15 I did at your initial appearance last week, that you do have  
16 the right to remain silent. And that means you don't have to  
17 stand up here and answer any questions.

18 And you also need to know that you have now just been  
19 placed under oath and that this proceeding is being recorded.  
20 And that anything that you say could be used against you.

21 So with that understanding, do you wish to answer  
22 questions?

23 TOMMY C. CONSTANTINE: I do with respect to the ones  
24 that have been presented before me.

25 THE COURT: My question to your attorney and I will

1 restate for you related to your employment. And the confusion  
2 I have is as to the nature of Arizona Falcon Partners, if that  
3 is, indeed, an entity, or if "Falcon" refers to a specific  
4 aircraft or perhaps both.

5 TOMMY C. CONSTANTINE: May I answer?

6 THE COURT: Yes.

7 TOMMY C. CONSTANTINE: It is confusing because there  
8 are actually three entities that each own an aircraft, each of  
9 which are Falcons. And then there's an entity called AZ  
10 Falcon Partners, which is essentially a Part 91 management  
11 company, which is what -- where I work. And I manage the  
12 aircraft which are in separate LLCs that are owned by  
13 different individuals.

14 The one that's in question, which is the Falcon 10  
15 which they seized, was at one time owned by Ken Jowdy and I  
16 believe a few of Phil Kenner's clients and, I believe, Phil  
17 Kenner. The money, my understanding, that paid for that  
18 airplane, came one hundred percent from Phil Kenner's clients.

19 Mr. Kenner and primarily Mr. Jowdy proceeded to use  
20 all three aircraft. There was three aircraft, including the  
21 Falcon 10. At will, essentially ran them into the ground,  
22 leaving his players who all invested, I believe, a quarter of  
23 a million dollars each, plus at least one that I know of, with  
24 a \$1.3 million personal guaranty for the loans for those  
25 aircraft.

1           The reason that I even know these people is because I  
2       was brought in by these two guys, Phil Kenner and Ken Jowdy,  
3       to try to remedy the situation, which I did. I was able to  
4       alleviate the hockey players of their -- I'm sorry. I was  
5       able to remedy the situation and save the aircraft as a  
6       collective group, alleviating huge financial ramifications for  
7       them and keeping the one airplane and I sold the other two  
8       airplanes in an environment that was unbearable. I should  
9       have gotten a Pulitzer prize for it.

10           Then, after that happened and we were all happy,  
11       Mr. Kenner turned on me and got the same people that I helped  
12       save the airplane to sue me for Eufora.

13           MR. WILENCHIK: Just stick to the question.

14           TOMMY C. CONSTANTINE: I then lost the airplane.  
15       Again, we lost the airplane again. And then a separate group  
16       of investors, the same investors that own the Falcon 20 and  
17       Falcon 50 elected to go buy that airplane from the bank. In  
18       fact, they bought the loan from the bank.

19           And the only reason that that airplane is not  
20       currently officially owned by Falcon 10 Partners which was the  
21       successor entity, is because I asked them to simply place a  
22       lien on the airplane for the amount of money that they have  
23       invested and allow me to reconcile with the original owners  
24       of -- the hockey players to try to retain some equity in it,  
25       which is essentially, Your Honor, like somebody losing their

1 house to the bank and then the bank saying, yeah, but you can  
2 still have a piece of it.

3 That's what I have engineered and that's what still  
4 is in place. Yet they have gone and taken the airplane away  
5 which belongs really to the new investors that have --

6 MR. WILENCHIK: Stick to the question the Judge asked  
7 you.

8 TOMMY C. CONSTANTINE: So the AZ Falcon Partners  
9 entity technically owns the Falcon 10 but is only in that  
10 instance because they haven't put it in Falcon 10 partners  
11 yet.

12 And so Falcon 10 partners is the entity that I manage  
13 because it manages all three airplanes for all of the owners  
14 of Falcon 10, Falcon 20, and Falcon 50 partners.

15 THE COURT: Okay. So Arizona Falcon Partners  
16 technically owns the Falcon 10 and that plane has been seized  
17 by the government; is that correct?

18 TOMMY C. CONSTANTINE: Correct.

19 THE COURT: And then there were two other aircraft  
20 also called Falcon.

21 MR. WILENCHIK: 20 and 50.

22 TOMMY C. CONSTANTINE: "Falcon" is like saying  
23 "Chevy." So the 10 is one model, the 20 is another model, and  
24 the 50 is another model.

25 THE COURT: So the two other aircraft were sold

1 essentially to a bank and then purchased by other investors?

2 TOMMY C. CONSTANTINE: Those airplanes were just  
3 bought independently of AZ Falcon and this Falcon 10 by -- it  
4 happens to be the same investors who invested in the 10, but  
5 they own the 20 and 50 in separate entities. And I manage  
6 those assets for those investors through AZ Falcon Partners.

7 THE COURT: So you manage the Falcon 20, the Falcon  
8 15 and you did manage the Falcon 10 until it was seized?

9 TOMMY C. CONSTANTINE: Correct. Correct.

10 THE COURT: And are you a licensed pilot?

11 TOMMY C. CONSTANTINE: I am not. I trained in a  
12 helicopter 15 years ago and I never got my license. But if we  
13 were stranded on an island, I could probably get us off if we  
14 have a helicopter.

15 THE COURT: The Pretrial Services' report states that  
16 you believe you would lose your employment or not be allowed  
17 to return to your place of employment due to this case.

18 And I assume that meant to Arizona Falcon Partners.  
19 Do you believe you are going to return to managing these  
20 aircraft for Arizona Falcon Partners.

21 TOMMY C. CONSTANTINE: I do believe I still have an  
22 opportunity to work at AZ Falcon Partners, but it's not fully  
23 subscribed. It's meant to have ten partners. It only has  
24 eight. And the confusion with the gentleman that I was  
25 speaking with was that I don't get a salary until we are fully



1 subscribed.

2 And as soon as I started explaining and then we both  
3 realized that it was a part of this case, he said something  
4 like "defensible" or something about the word "defense" and  
5 don't talk about it anymore because it's about this case.

6 That's why the confusion of the 5,000. I don't get  
7 paid yet, but I will when it's fully subscribed.

8 I have to tell you that since this has happened  
9 though, we have already been noticed of two partners  
10 terminating, so I don't know where that's going to end up.  
11 But this is the kind of damage that's being caused by all of  
12 this. But I hope that I will be able to go over there and  
13 build that and Eufora into profitable businesses.

14 THE COURT: Where are these three aircraft? Where  
15 are they physically located?

16 TOMMY C. CONSTANTINE: They're located at the  
17 Scottsdale Airport. Each of them have to be registered with  
18 the City of Scottsdale Airport to a specific hangar and they  
19 are very well known where they belong by the airport  
20 authority.

21 MR. WILENCHIK: Let me be clear, Your Honor, just to  
22 clarify, the business at Arizona Eufora is conducted in the  
23 same building that he's been in for many years. And I don't  
24 know what the ownership exactly of that building is. You can  
25 explain that in a minute.

1 But ever since I have known him, he has been in this  
2 building which has a hangar attached to it on the Scottsdale  
3 Airport. Not withstanding, we have known about this case  
4 brewing for years. He has never made any effort, as I said,  
5 to flee or go anywhere.

6 But Eufora is in the same location as the Arizona  
7 Falcon Partners. So the planes are all run out of his one  
8 location there on 83rd Street and Scottsdale -- is it 83rd or  
9 82nd?

10 TOMMY C. CONSTANTINE: It's 82nd.

11 MR. WILENCHIK: 82nd. I always get that wrong. And  
12 off Frank Lloyd Wright Boulevard. That's where he goes every  
13 day from his house in north Scottsdale and he leases.

14 TOMMY C. CONSTANTINE: In fact, if you look at the  
15 document, I gave them that address too. But when I told him  
16 it was my office, he scratched it off. It's 16044 North 82nd  
17 Street. And I believe half of it is written on that document.  
18 It's four miles from where I stay.

19 THE COURT: All right. Thank you, Mr. Constantine.

20 Mr. Lanza, was there anything you wanted to ask  
21 Mr. Constantine?

22 MR. LANZA: Yes. How long have you been working in  
23 this management capacity for AZ Falcon Partners in terms of  
24 providing management purposes?

25 TOMMY C. CONSTANTINE: Since its inception.

1 MR. LANZA: Say around 2009?

2 TOMMY C. CONSTANTINE: I believe so.

3 MR. LANZA: Approximately, how many hours a week do  
4 you work providing these services?

5 TOMMY C. CONSTANTINE: It varies because it depends  
6 on how often the guys fly. But whenever necessary, which  
7 sometimes can be five hours a week and sometimes can be 50  
8 hours a week.

9 MR. LANZA: So continuously since 2009, you have  
10 worked somewhere between roughly 5 to 50 hours a week for AZ  
11 Falcon Partners every week for the last four years?

12 TOMMY C. CONSTANTINE: Yes, but not exclusively.

13 MR. LANZA: How much income in the aggregate have you  
14 earned from this four years of 5 to 40 hours a week of  
15 employment?

16 TOMMY C. CONSTANTINE: I don't know. And only  
17 because I'm involved in an IRS matter, I would rather not even  
18 guess. I don't know.

19 MR. LANZA: Have you earned any?

20 TOMMY C. CONSTANTINE: I don't know. I don't know  
21 because I'm not sure what is classified as income.

22 MR. LANZA: Have you ever received a check from AZ  
23 Falcon Partners?

24 TOMMY C. CONSTANTINE: Perhaps. I don't know.

25 And again, this is not an area that I'm entirely

1 comfortable with, so to the extent I can invoke my whatever  
2 right that is to remain silent, I would like to on that  
3 subject.

4 MR. WILENCHIK: You don't have to.

5 TOMMY C. CONSTANTINE: "I don't know" is the answer  
6 to that. I don't want to guess and then be told I'm lying,  
7 which has happened in everything else.

8 MR. LANZA: Do you rely in part on the money you get  
9 from AZ Falcon in whatever form or amount it might take to  
10 fund your daily expenses, you know, rent, food, gas, that sort  
11 of thing?

12 TOMMY C. CONSTANTINE: I don't know how to answer  
13 that question without more information because I think it's an  
14 accounting question.

15 MR. LANZA: Separate from characterizing that money  
16 as income, how else might that money be characterized then if  
17 you are uncomfortable characterizing the payments from AZ  
18 Falcon as income?

19 TOMMY C. CONSTANTINE: I don't even understand what  
20 you said, but I would like to try. Can you say it again  
21 please?

22 MR. LANZA: Regardless of whether it's income or some  
23 other way of characterizing it, do you ever get money from AZ  
24 Falcon?

25 TOMMY C. CONSTANTINE: I mean, possibly, yeah. It

1 depends on the circumstances. Oftentimes, I need money to do  
2 things for the company, yes.

3 MR. LANZA: Do you ever --

4 TOMMY C. CONSTANTINE: Sorry.

5 MR. LANZA: Give an example of how you get money to  
6 do things for the company.

7 TOMMY C. CONSTANTINE: I might need to tip a line  
8 guy. I might need to buy a meal. I might need to buy a part.  
9 It's very common.

10 MR. LANZA: Separate from money that you use to fund  
11 AZ Falcon's affairs, do you ever receive money from AZ Falcon  
12 that you use in any way for your own personal support?

13 TOMMY C. CONSTANTINE: It's possible, but I don't  
14 know -- I can't answer that without more information in front  
15 of me and a conversation at least with my accountant.

16 MR. LANZA: You filed for bankruptcy in 2012?

17 TOMMY C. CONSTANTINE: I did.

18 MR. LANZA: And you reviewed the schedules and  
19 financial statements that were filed as part of those, that  
20 filing?

21 TOMMY C. CONSTANTINE: I have.

22 Can I ask my attorney a question, please?

23 MR. LANZA: Sure.

24 (Discussion had between defendant and counsel.)

25 MR. WILENCHIK: Your Honor, I do think, with all due

1 respect to Mr. Lanza, this is going beyond the questions  
2 relating to AZ Partners. I think he has some discomfort  
3 because he does not have his bankruptcy counsel here.

4 I'm not familiar with the bankruptcy and I am not  
5 familiar with the bankruptcy proceeding other than an  
6 adversary proceeding that I'm involved in.

7 Mr. Littler is his counsel. His accountant is  
8 Mr. Semple or has been Mr. Semple who I'm sure could be  
9 contacted. But I think he is uncomfortable because of the way  
10 in which they handle the accounting of all these things and he  
11 doesn't want to say something that can be proven to be wrong.

12 I think he's hesitant to answer that and I don't  
13 think these are really related directly to the issue that we  
14 raised or -- we'll waive the testimony on the Falcon. If I'm  
15 wrong, then maybe you can clarify.

16 MR. LANZA: I'm not sure I can proceed, Your Honor.

17 The question that we agreed to limit the scope to was  
18 to talk about AZ Falcon and the money you received from it.  
19 We even pointed out on Friday that the government was alleging  
20 there was a discrepancy between what the Pretrial Services'  
21 report talks about an income and what the bankruptcy schedules  
22 talk about an income.

23 These are the very things I'm trying to explore  
24 through my questions here. It's very limited.

25 MR. WILENCHIK: Well, I don't object -- let me just

1 say this, Your Honor, please.

2 I don't object if he's asking about a specific  
3 reference in a bankruptcy schedule to AZ Falcon Partners that  
4 may be inconsistent with what he's saying at this hearing. I  
5 have no problem with that.

6 THE COURT: Well, what Mr. Lanza is getting at is  
7 what I had explained to you had occurred on Friday when you  
8 weren't present, Mr. Wilenchik, was the government had  
9 asserted in its proffer that the statement in the Pretrial  
10 Services' report or the reported statement that he was  
11 employed at Arizona Falcon Partners and receiving \$5,000 a  
12 month was, in the government's view, inconsistent with his  
13 representations about income in his bankruptcy filings.

14 And I had asked you for some clarification on what is  
15 Arizona Falcon Partners.

16 MR. WILENCHIK: Right.

17 THE COURT: In part trying to understand if he was  
18 employed there. My interest was not so much directed at the  
19 financial implications, but as to the accessibility of  
20 aircraft. And I also was confused by the naming of the  
21 aircraft as Falcons or the naming of the entity as Arizona  
22 Falcon Partners.

23 MR. WILENCHIK: Yeah. That's what I thought.

24 THE COURT: So you brought Mr. Constantine up to  
25 testify on that. And I know he's understandably agitated by

1 the proceedings and I think he's excited this afternoon to  
2 some degree this afternoon to have an opportunity to present  
3 his story or explain himself a little bit.

4 So he did go a bit beyond, but we had addressed about  
5 what is this entity? Where are these aircraft? What are  
6 they? Do you manage them? And he said some additional things  
7 beyond that.

8 I don't think Mr. Lanza is going too far afield to  
9 ask about income, because that's where this all began. And  
10 what he's exploring is the very proffer they made on Friday.

11 However, even though Mr. Constantine has been warned  
12 about waiving his right to remain silent, this is just a  
13 detention hearing. This is not the trial. I don't want to  
14 put Mr. Constantine in a position of making incriminating  
15 statements.

16 If he's willing to withdraw his testimony about any  
17 kind of income issues, then I don't want to go into it in this  
18 proceedings.

19 MR. WILENCHIK: I just want to be clear, Your Honor.  
20 All I think he said here and so we're clear on this is he was  
21 trying to clarify, from what I heard, he was trying to clarify  
22 a statement made about the \$5,000. And I thought what I heard  
23 him say is that he was saying that that was misunderstood and  
24 that he was talking about he might get that when they are  
25 fully funded and fully -- have a full partnership.



1 But he did not say he was making \$5,000 presently, if  
2 that was not clear.

3 MR. LANZA: I think that's never been what he said.  
4 That's what his attorneys have said a couple of times. But  
5 let me say this, Your Honor --

6 THE COURT: Well, he did say that it wasn't fully  
7 subscribed; that there was eight members of the partnership  
8 and not ten. And I thought he was trying to express that the  
9 income was prospective and that two partners had withdrawn.

10 MR. WILENCHIK: Right.

11 THE COURT: But I understand, Mr. Lanza, you were  
12 asking him whether he has received any income from this  
13 entity.

14 MR. LANZA: I'm sensitive to the fact that it's  
15 unusual to have somebody in a charged case under oath in this  
16 proceeding. I don't want to press it to an unfair advantage.  
17 I think I can make the arguments I need to make on what's  
18 already been testified to and I don't need to ask any more  
19 questions.

20 THE COURT: All right. Thank you, Mr. Lanza.

21 MR. LANZA: Thank you, Your Honor.

22 MR. WILENCHIK: Your Honor, if you have any other  
23 questions specifically as to that, I will have him respond.  
24 If not, because I think that was helpful, but if not, I don't  
25 intend to expand this as we just stated into his general

1 testimony.

2 THE COURT: So there are three Falcon aircraft. They  
3 are currently physically located at the Scottsdale Airpark.  
4 One has been seized by the government. The other two are  
5 owned by investors; is that correct?

6 TOMMY C. CONSTANTINE: In the name of Falcon 20  
7 Partners and Falcon 50 Partners, LLC, of which neither am I an  
8 owner.

9 THE COURT: You would manage those two LLCs and  
10 manage the aircraft?

11 TOMMY C. CONSTANTINE: I do.

12 MR. WILENCHIK: Both of those planes, Your Honor, I  
13 happen to know --

14 TOMMY C. CONSTANTINE: They are not airworthy. They  
15 are in the middle of very extensive maintenance which will  
16 take months. It's a six-year check. Every six years they  
17 have to take both airplanes completely apart and inspect them.  
18 One is just midstream and the other one is just getting  
19 started.

20 THE COURT: Thank you. That's helpful.

21 Mr. Wilenchik, I would ask you to have  
22 Mr. Constantine sit down again.

23 MR. WILENCHIK: Yes. Thank you, Your Honor.

24 TOMMY C. CONSTANTINE: Thank you, Your Honor.

25 MR. WILENCHIK: I mean, Your Honor, let me just say

1       this please.

2               I can call Mr. D'Ambrosio who really has a lot of the  
3       information on Eufora. He works there with Mr. Constantine.  
4       I can get into a lot of the facts here about the Eufora case  
5       and the alleged victims and their claims.

6               I can do it as quickly as I can, if the Court please,  
7       just to establish he does show up every day. He has never  
8       stated that he's going to be leaving town or anything like  
9       that throughout all the investigation he has gone through,  
10      articles in the Fortune magazine about this, Daily News, you  
11      name it.

12              He has never indicated any propensity to leave the  
13      country, leave the state or jurisdiction, other than to go to  
14      hearings that I have been to with him.

15              And he has no intention but to fight this fully. And  
16      as I said, Mr. D'Ambrosio was a party to that action, so I  
17      think he has personal knowledge of this. Or I can avow it. I  
18      mean, however you want to do it is fine with me. But he is  
19      here and I can put him on the stand just to quickly establish  
20      what I just said.

21              THE COURT: Well, he is --

22              MR. WILENCHIK: If it's relevant to the Court. If  
23      it's not and I'm barking up the wrong tree, I'll get to  
24      something that's more relevant.

25              THE COURT: Well, let me ask you a few questions. He

1 is Mr. Constantine's partner at Eufora?

2 MR. WILENCHIK: Not a partner. I mean, you know,  
3 loosely I suppose you could say that. But he is involved in  
4 Eufora. I'm not sure of his exact title at Eufora. But he  
5 does work with him very closely there every day. Every time I  
6 have seen them, they have been together there. So they have a  
7 long relationship that goes back in Eufora.

8 And I think he would be probably the best person to  
9 know what his daily habits are, where he goes, how far he  
10 lives, things like that, rather than calling his fiancée who  
11 obviously, you can appreciate, is a little distraught.

12 I think he would be a little more objective -- not  
13 credible necessarily, because it's not that nobody else would  
14 be credible, but I think more knowledgeable about, you know,  
15 his restrictions.

16 THE COURT: Well, I don't think there has been a  
17 suggestion that Mr. Constantine has not resided here since, I  
18 believe, 1995.

19 MR. WILENCHIK: And worked here.

20 THE COURT: And worked here.

21 The information that the government proffered was  
22 that he had traveled internationally, fairly extensively, and  
23 a great deal of that travel was in private aircraft.

24 MR. WILENCHIK: I would like to address that.

25 THE COURT: And, let's see, three trips to the

1 Bahamas this year.

2 MR. WILENCHIK: Right.

3 THE COURT: A trip to Mexico this year. A trip to  
4 Mexico last year. A trip to Zurich last year. Twelve trips  
5 to Mexico between 2007 and 2009.

6 So I think the government's point was that he has  
7 traveled extensively out of the country and that those trips  
8 were on private aircraft other than the trip to Zurich.

9 Is Mr. D'Ambrosio going to address that? I don't see  
10 that the two are connected. I don't think there was anything  
11 in the government's proffer about Mr. Constantine's daily work  
12 habits or where he lives or commutes.

13 MR. WILENCHIK: I apologize.

14 I can just tell you quickly. I don't know that he  
15 can any more than I can. And all I can tell you is, having  
16 been personally familiar with that, is that I had been on the  
17 Falcon planes with Mr. Constantine.

18 And he has a friend who is a mutual friend who has a  
19 boat in the Bahamas that he and his fiance have vacationed on.  
20 He has returned on the same plane as I have from another  
21 location where we met up. My daughter is in law school in  
22 Washington where I'm at this week.

23 And they always come home. And as far as Mexico, I'm  
24 not exactly sure what the allegation is, but I would suspect  
25 he's been to Cabo. I know that as I said earlier that another

1 enterprise he has an involvement in, SetJet, which is  
2 operating out of Scottsdale terminal, is considering going to  
3 Cabo. So it's very possible he went there for either a  
4 vacation and/or to look into that issue.

5 I don't think he has any problem with agreeing not to  
6 go out of the country whatsoever. It's not necessary he goes  
7 out of the country. He has never gone out for any other  
8 purpose other than vacation as far as I'm concerned that I  
9 know, like all of us.

10 So I don't know what to say, other than I suppose any  
11 one of us could be accused of going out of the country from  
12 time to time including me. I don't think there is anything to  
13 make of that other than the fact that he would agree -- I'm  
14 positive he would agree -- not to do that. And as I said, to  
15 wear an ankle bracelet or something, you know, if the  
16 government is concerned about that, which I don't think is a  
17 realistic concern about, the fact that they are private craft  
18 is kind of meaningless at this point. They're not even  
19 operational and one has been seized. That's the one that we  
20 were on.

21 And so I don't know what to make of that. There is  
22 no way he's going on either of those planes at this point.  
23 And as I said, the only other operation I know that he has any  
24 involvement is -- and I'm not sure exactly what the  
25 relationship is -- other than the fact that I think it was his

1 brain child, but I know he's not the owner of SetJet which is  
2 a service that runs -- I was just on it -- a wonderful service  
3 that runs out of Scottsdale Airport terminal for the first  
4 time and is owned by another individual who put the money in  
5 the planes.

6 And I can tell you, Mr. Lassetter, that he is not  
7 going to allow Mr. Constantine to travel anywhere outside the  
8 country if the Court says that he can't travel outside the  
9 country on any of those planes.

10 And frankly, they don't fly outside the country.  
11 They fly right now to Vegas, Los Angeles, I believe San Diego  
12 on occasion, maybe one other stop, but that's all I can recall  
13 at the present time.

14 THE COURT: Well, at this point in the proceedings,  
15 Mr. Wilenchik, what I would like to determine is whether you  
16 intend to call any of your witnesses.

17 Now I'm not suggesting that you need to do that. I  
18 had this conversation with Ms. Chenal on Friday as well. And  
19 as I understood her comments, she was indicating that the  
20 witnesses would either be character witnesses or address the  
21 property that's been suggested to be posted for the bond.

22 And that's my knowledge of what the witnesses would  
23 say. I have several letters from individuals who are  
24 attesting to Mr. Constantine's good character.

25 MR. WILENCHIK: Right.

1 THE COURT: Ms. Chenal seemed to be of the opinion  
2 that the live witnesses might be redundant to what's in the  
3 letters. And this afternoon you've confirmed, I believe, that  
4 Mrs. Constantine would address the property if she were to  
5 testify and Mr. D'Ambrosio would talk about Mr. Constantine's  
6 work habits and daily routine, and the other individuals on  
7 your list, I'm assuming, are character witnesses.

8 MR. WILENCHIK: Yeah. The only other thing as to the  
9 D'Ambrosio proffer I would say would be that he is aware of  
10 the investigation in New York, has been for years now. That  
11 Mr. Constantine has talked to him about that investigation.  
12 Has indicated full cooperation. Gone to Manhattan. Talked to  
13 the FBI. Talked to the U.S. Attorney.

14 Has always provided all documentation including  
15 accounting records and cooperated in every way he knows how  
16 because he intends to defend himself. There is no indication  
17 anywhere that I know of that the government can provide that  
18 this man would in any way, shape, or form, I can tell you, and  
19 know him, attempt to flee this jurisdiction, flee this case  
20 and anything else. He intends to defend the case.

21 THE COURT: All right. Well, then I can accept that  
22 as a proffer that Mr. D'Ambrosio would testify that he had  
23 discussions with Mr. Constantine in which Mr. Constantine  
24 advised him of the investigation in New York, his trips to New  
25 York to cooperate, and did not express to Mr. D'Ambrosio any



1 indication that he wished to flee.

2 MR. WILENCHIK: And the final thing, Your Honor, I  
3 said was that he would also testify that these individuals who  
4 were sort of what I call the ring leaders, there's two of  
5 them, work for Mr. Jowdy who is the individual that we just  
6 heard Mr. Constantine mentioned, who is basically a sworn  
7 enemy.

8 That these individuals have seen to it to harm  
9 Mr. Constantine. That he is aware of all of that. And most  
10 importantly, I think, that he was present during discussions  
11 with some of -- with these individuals about making offers to  
12 basically pay whatever they had or claimed they had in this  
13 Eufora company back to them minus whatever fees were incurred  
14 in defending their frivolous lawsuit they filed in civil  
15 court.

16 And that they rejected that, never got back to them,  
17 and that they had no interest registered in Eufora. It was  
18 all done through Mr. Kenner in an LLC he had formed and  
19 invested in Eufora. Notwithstanding that, Mr. Constantine  
20 offered to pay them back whatever money they could establish  
21 they paid Mr. Kenner, not him.

22 I don't know what more he could do.

23 THE COURT: All right. Well, Mr. Wilenchik, I would  
24 like to make some headway with this proceeding.

25 MR. WILENCHIK: Yes.

1           THE COURT: We're now coming up to the two-hour mark.  
2           And so what I'm trying to establish is if you feel comfortable  
3           resting on your proffer and your argument and we can move  
4           forward or if you feel that you need to put on any of these  
5           witnesses. I think I understand from our fairly lengthy  
6           discussion now your proffer as to the testimony from  
7           Mr. D'Ambrosio and the other witnesses would be character  
8           witnesses.

9           MR. WILENCHIK: Yeah. Those are character witnesses  
10          who have known him for years.

11          The only final thing, Your Honor, if the  
12          government -- and I respect Mr. Lanza greatly -- if the  
13          government has any information, real information that this man  
14          is a flight risk, I'm here today not only as a lawyer but as a  
15          friend to try to deal with it and to try to answer it, any  
16          concern, any real concerns as opposed to just "we want him  
17          back there."

18          If there is some indication that the U.S. Attorney  
19          back there has that this man has indicated to anyone that he  
20          is going to flee, I would like to hear it and I'll address it  
21          quickly and deal with it as best I can. But right now I don't  
22          know what else to do affirmatively to show the Court that this  
23          man has no intention.

24          THE COURT: Thank you, Mr. Wilenchik. I will call on  
25          Mr. Lanza and see if he has anything in response.

1           MR. LANZA: I don't have any further facts to  
2 proffer. I have some thoughts on the equity in the property.  
3 I think that we have generally fleshed them out, but I don't  
4 even think we need to go into it now because the Court has  
5 said for purposes of this hearing it's simply willing to  
6 accept there is a stated amount of equity in the property.

7           THE COURT: That's correct.

8           MR. LANZA: I have some thoughts on that, but I don't  
9 think I need to go into it.

10          THE COURT: Well, are the thoughts related to  
11 logistical or administrative issues on how to address the  
12 property should it be posted as security? Or is it the  
13 government's position that perhaps the property really doesn't  
14 have the value or the equity that the defense has suggested?

15          MR. LANZA: I think it's the latter. Trust and  
16 verify. I think it's possible or likely it does have the  
17 equity that has been represented, but there's a couple of  
18 points that I was able to speak informally with the  
19 defendant's mother beforehand that gave me comfort that my  
20 concerns are misplaced. But I still think it would need a  
21 little more investigation just to conform those things.

22          THE COURT: All right. Mr. Lanza, is there anything  
23 else that you wanted to present or say in response to what the  
24 defense has presented?

25          MR. LANZA: I don't have any more facts to proffer.

1 My final bit of argument I have already said my piece in the  
2 papers.

3 A great deal of what Mr. Wilenchik said today, I  
4 think, really went to the element of how strong is the  
5 evidence in the case. It was about the details of Eufora and  
6 all that.

7 Typically, you get into discussion of the strength of  
8 the evidence in preindictment cases where it's just a  
9 complaint. The grand jury has already found there's probable  
10 cause to support these charges. That's usually deemed  
11 conclusive on the point that there is sufficient evidence or  
12 somewhat strong evidence in the case.

13 That's the least important factor, in any event, in  
14 the flight calculus.

15 I think the government's reasons for seeking  
16 detention in this case are focused most on the fact that the  
17 Guidelines are off the charts in this case. And you've got a  
18 defendant who has international ties, access to potentially  
19 unaccounted-for cash related to the underlying scheme.

20 And in the New York proffer letter, one of the  
21 victims advised that both Kenner and Constantine advised that  
22 Constantine has family in Greece and that Constantine could  
23 move to Greece, if necessary.

24 I think that's the element here that distinguishes  
25 this from the usual white-collar case that has theoretically

1 high Guidelines exposure. When you've got a defendant who at  
2 least some of the victims are saying has already laid the  
3 groundwork for a flight plan, that's obviously very concerning  
4 to us and I think that's probably the most crucial factor here  
5 supporting the detention request.

6 The final point I'll make before I sit down relates  
7 just to this point about income, you know, the little bit of  
8 under-oath testimony today.

9 You know, the Pretrial Services, we deal with them a  
10 lot. They're usually pretty accurate what they put in their  
11 report. They wrote down that he said: I make \$5,000 a month  
12 and I have since 2009.

13 The bankruptcy petition says he said under oath that  
14 he had never made -- he hadn't made any money for years from  
15 this AZ Falcon Partners. And then he testified today that  
16 he's worked 5 to 40 hours a week for four years.

17 Now, common sense tells us that people usually get a  
18 little bit of income if they work that many hours for that  
19 many years in companies that is essentially their full-time  
20 employment. It is not consistent with common sense that one  
21 wouldn't make any income from that, which means that the  
22 bankruptcy petition may have been inaccurate.

23 But then when I asked what I thought were some very  
24 basic common sense questions that didn't need an advanced  
25 accounting degree to answer, such as, "Did you make any

1 income," there were nervous denials and concerns that the  
2 question was too complex, which again, I don't know the true  
3 answer, but I have concerns that there is not complete  
4 truthfulness going on between all these different sources of  
5 what the income picture is.

6 And that's just a further -- not the most powerful  
7 factor, but a factor on -- a thumb on the scale here about are  
8 these representations about truthfulness and "you can trust  
9 me" something that the Court should accept?

10 THE COURT: All right. Thank you, Mr. Lanza.

11 Briefly, Mr. Wilenchik. The government does have the  
12 burden here. And between Ms. Chenal's presentation and yours,  
13 the defense has gone for two hours. Mr. Lanza has probably  
14 presented ten minutes over the last two days. But I'm willing  
15 to hear you one more time.

16 MR. WILENCHIK: No problem with Mr. Lanza if he wants  
17 to present more, that's fine with me. I'm just trying to  
18 respond to what he said.

19 THE COURT: Go ahead.

20 MR. WILENCHIK: First of all, Your Honor, whether or  
21 not Mr. Constantine's bankruptcy petition and bankruptcy have  
22 been properly handled is really not a matter here for the U.S.  
23 Attorney or me or you, for that matter, I believe. That's a  
24 matter for the Bankruptcy Court.

25 And frankly, the little I know of that bankruptcy

1 proceeding, the courts and the Trustee have gone through all  
2 that stuff. So I would rather take their word for what they  
3 have gone through on his records and what his creditors who  
4 have the right to object to any of those schedules and any of  
5 his bankruptcy filings can do to object to that bankruptcy,  
6 more so than with all due respect to the presentence report  
7 people who have a conversation with a man who is distraught  
8 and saying a lot of things and probably just got it wrong.  
9 That's all there is to it.

10 As far as expenses are concerned, I'm sure, like he  
11 said, he does take expenses from these various operations to  
12 live on. I would assume that. I don't know that, but I would  
13 assume that, like Mr. Lanza does. But I don't know what that  
14 has to do with anything here.

15 And further, when Mr. Lanza says he has international  
16 ties and so forth, I don't know of any international ties.  
17 His family is sitting right here in this court. No  
18 international ties. Nobody in Greece. I didn't hear that.  
19 Somebody hearsay saying he has people in Greece or something?  
20 He doesn't even know what they're talking about.

21 So finally, Eufora. The only reason that I discussed  
22 Eufora with the Court, not so much to try the case here  
23 substantively, but to give the Court a flavor for what we're  
24 talking about and how weak it is and how ridiculous it is.

25 But more importantly, the reason for your purposes

1 was to establish that he shows up every day at the same  
2 location and has for years. Knows about this proceeding  
3 coming down on him. It's no secret to anyone. Has cooperated  
4 with it and hasn't attempted to flee, but in fact, has  
5 attempted to cooperate.

6 And yet there is in return what the government does,  
7 notwithstanding that he has attempted to provide them all  
8 documentation at their requests. Always responded to them and  
9 their investigators. And now we hear that he's a flight risk  
10 going to go to Greece.

11 Please, I think the Court is intelligent enough  
12 certainly to understand this man is no flight risk. He is no  
13 danger to society. He has a case like a lot of people do.  
14 He's entitled to be out with his family. And they are willing  
15 to trust him enough to put up a bond, were willing to comply  
16 with all of the presentence -- or pretrial, excuse me --  
17 recommendations, Pretrial Services' recommendations as stated  
18 on page 2 of our brief.

19 He's willing to even have an ankle bracelet if the  
20 Court has any concern. Willing to instruct at the  
21 government's request anybody that he deals with with SetJet,  
22 Falcon Partners that he has no ability to go outside this  
23 country, including the pilots. And we will go further and  
24 submit his passport to the Court, which I don't know what else  
25 we can do to assure that he is not leaving this country or



1 anywhere else. And he's got a baby on the way to make matters  
2 worse.

3 His mother is recovering from cancer. This has been  
4 a terrible situation. He is not leaving his family unless the  
5 Court orders it. And we ask the Court to consider not to do  
6 that. There is just no basis for it. It is just the  
7 government being punitive.

8 I do have his passport, Your Honor, as well.

9 THE COURT: All right. Thank you, Mr. Wilenchik.

10 MR. WILENCHIK: Thank you.

11 THE COURT: As I understand the government's position  
12 from reading their brief on detention and Mr. Lanza's  
13 arguments and proffer over the last two days, the government  
14 is not arguing that Mr. Constantine poses a danger to the  
15 community. Rather, they are arguing that he poses a risk of  
16 flight.

17 The defense has put forth a number of arguments as to  
18 why they believe that is not the case. And then also, they  
19 have proffered some factual information that I believe was  
20 intended to establish that even should the Court conclude that  
21 Mr. Constantine poses a risk of flight, that there are  
22 conditions that could be fashioned to address that risk.

23 In part I am tempted to just tell you what I have  
24 concluded without responding to any of the arguments the  
25 defense has made. But in the interests of a complete record,

1 I will respond to what's been presented.

2 The defense argued the first factor, the nature and  
3 circumstances of the offense charged, and suggested that it  
4 was extraordinary or unheard of or extremely unusual for the  
5 government to seek detention of the defendant in something  
6 other than a crime of violence or a case involving firearms or  
7 drugs or a minor. And that is simply not the case.

8 And in this Court's experience, the government  
9 frequently seeks detention in cases that do not fall within  
10 those parameters, and frequently seeks detention in cases in  
11 which they do not have a presumption that there is a risk of  
12 flight or danger. They also frequently seek detention in  
13 white-collar cases.

14 Now, that argument was used to suggest that the  
15 government's motive in seeking detention in this case was  
16 punitive or that there was some personal vendetta or that the  
17 prosecutors in New York were seeking to impair  
18 Mr. Constantine's ability to defend himself. But there was no  
19 evidence to support those arguments or those suggestions.

20 And really, the two factors that are at issue are the  
21 weight of the evidence and the defendant's history and  
22 characteristics.

23 The fourth factor, the nature and seriousness of the  
24 danger to any person in the community, I do not believe is at  
25 issue, because the government has not even suggested that

1 Mr. Constantine is a danger.

2 And as I noted, the first factor in my view is  
3 neutral. The government frequently seeks detention in these  
4 sorts of cases. There is nothing to suggest there is any  
5 improper motive or that there is anything punitive in what  
6 they are doing.

7 Both parties have argued quite a bit about the weight  
8 of the evidence. The government's point is that  
9 Mr. Constantine has already been indicted. The indictment  
10 identifies 16 victims. And the government proffers that  
11 multiple victims will testify as to the scheme to defraud  
12 them.

13 And so they argue that the government -- that they  
14 have strong evidence. And the reason that that evidence would  
15 be significant is because it would relate to the defendant's  
16 motive to flee.

17 The defense has argued quite extensively that the  
18 government's case is very weak, that it is driven by  
19 Mr. Constantine's enemies and others who wish to steal his  
20 company or to do him harm in some fashion, and that ultimately  
21 the government will not prevail, they will not be able to  
22 prove their case beyond a reasonable doubt and, that he will  
23 be acquitted.

24 In the Ninth Circuit the weight of the evidence is  
25 the least important factor. And so I am not giving it much

1 weight, although I have fully appreciated that the government  
2 and the defense have diametrically opposed views on these  
3 issues.

4 I think that the government has succeeded in  
5 establishing just on the basis of the indictment and the  
6 number of victims they have identified or alleged victims who  
7 will -- they say will testify -- that the defendant does have  
8 a motive to flee, particularly if their Guidelines calculation  
9 is correct.

10 Their Guidelines calculation was 151 to 188 months if  
11 he is in Criminal History Category II. And that's 12.5 years  
12 to 15.6 years. And so I believe the government's point was  
13 that the person who has been indicted on charges with that  
14 type of exposure would have the motivation to flee the  
15 country. And even with family members here, could conclude  
16 that he would have a better opportunity of spending time with  
17 his family if he left the country rather than if he faced the  
18 possibility of going to prison for a very significant amount  
19 of time.

20 All of this is a way of saying that I conclude that  
21 Mr. Constantine does pose a risk of flight that needs to be  
22 established by a preponderance of the evidence and I think  
23 that evidence is present. It includes the fact that he has  
24 been indicted, the number of alleged victims who the  
25 government proffers will testify, and the government's proffer

1 that Mr. Constantine and his co-defendant allegedly told one  
2 of the victims who has contacted the government and will  
3 allegedly testify to the fact that they said Mr. Constantine  
4 could flee the country and would flee to Greece.

5 The other issue that was of serious concern to the  
6 Court was the government's proffer that Mr. Constantine is a  
7 pilot and has access to private aircraft.

8 Now, Mr. Constantine has clarified that he does not  
9 have a pilot's license. And he's explained more about his  
10 association with these aircraft, and in fact, one of them is  
11 seized and two of them are not operational. And so the Court  
12 no longer has a concern that he has ready access to private  
13 aircraft that he could pilot himself and use to leave the  
14 country.

15 So having concluded that he does pose a risk of  
16 flight, the issue then becomes whether there are conditions  
17 that could be fashioned to address that risk. It is the  
18 Court's conclusion that conditions can be fashioned to address  
19 the risk of flight. However, the conditions would be much  
20 more exacting and demanding than the conditions proposed by  
21 the Pretrial Services officer.

22 Our Pretrial Services officers do an excellent job.  
23 They interview defendants under a short time frame and their  
24 recommendations are respected by the Court.

25 But I can tell you in response to one of the defense

1 arguments that the Court should follow Pretrial Services'  
2 recommendation or that the Court always follows Pretrial  
3 Services' recommendation, but that is not the case. It is  
4 simply a recommendation.

5 And then additional information will come through,  
6 you know, a hearing that goes on for over two hours. And so  
7 with the greatest respect for the Pretrial Services officer, I  
8 do not believe that the conditions that were proposed on the  
9 basis of a brief interview are sufficient based on the  
10 additional information that the Court has received.

11 So I will order that he be released subject to  
12 conditions. The conditions are going to include the standard  
13 conditions that we can go over a little later.

14 Also, that he will not travel out of the State of  
15 Arizona, except to travel to and from the prosecuting district  
16 which will be the Eastern District of New York.

17 That he will not travel on any private aircraft.

18 That he will wear a GPS monitoring bracelet or  
19 anklet.

20 And that he will post or his mother will post a bond  
21 in the amount of \$500,000 secured by property.

22 Those are the general parameters of the conditions  
23 I'm considering. It will take, I estimate, at least a day for  
24 Mr. Wilenchik and Mr. Lanza to confer on the issues regarding  
25 the property to fill out the numerous forms that need to be

1 completed and the signing that needs to be accomplished to do  
2 that.

3 So I would propose that we continue this until  
4 Wednesday afternoon to allow all of these issues to be  
5 addressed. And at that time, assuming that the equity does  
6 exist and all the issues with the property are in order, we  
7 could go over the conditions at that time.

8 MR. WILENCHIK: Your Honor, I know I will not be  
9 here. I will be in Washington DC, as I said earlier, so I  
10 would just ask that Ms. Chenal be allowed in my place to  
11 finalize those points.

12 THE COURT: Yes. That would be fine.

13 MR. WILENCHIK: Thank you.

14 THE COURT: There was something else I did want to  
15 address. There was a lot of argument about Mr. Constantine's  
16 income, a lack of income, or what he represented in the  
17 bankruptcy proceeding versus what he represented to Pretrial  
18 Services or this Court about income.

19 And Mr. Wilenchik argued that that is really not  
20 relevant. It goes to the issues in the bankruptcy. And  
21 Mr. Lanza argued that it is at issue because it goes to  
22 unaccounted-for cash.

23 MR. WILENCHIK: I couldn't hear you, Your Honor. Did  
24 you say "accounted"?

25 THE COURT: Well, unaccounted for.

1 MR. WILENCHIK: Oh.

2 THE COURT: The government's allegation that there  
3 are unaccounted-for sums of money, that there has been  
4 financial wrongdoing.

5 And the Court agrees, those issues are relevant, in  
6 particular because the Court is concluding that a bond can be  
7 posted for his release. And the allegation of unaccounted-for  
8 sums of cash is significant, because one could conclude that  
9 Mr. Constantine might simply flee and reimburse his mother for  
10 the value of the property in some other fashion.

11 I believe that is a risk. I don't believe the  
12 government is out of bounds in arguing that or suggesting  
13 that. But I'm concluding that the bond, coupled with the  
14 other -- I should say combined with the other conditions,  
15 would be sufficient to address those risks.

16 I'm not going to stay my order, because one, the  
17 government hasn't asked me yet to do that again, although they  
18 did ask me to do that on Friday; and two, because  
19 Mr. Constantine will not be released until Wednesday.

20 The government had previously asked me for one day  
21 unless they can make a case why they would need additional  
22 time to stay my order. And they can seek an appeal in the  
23 district court between now and Wednesday if they choose to do  
24 so.

25 Mr. Lanza, did you wish to request any other stay?



1           MR. LANZA: I would like to make declarative  
2 statements rather than sort of muse out loud.

3           I don't know if what the Court has done today is a  
4 formal order such that now we can go to the district court  
5 judge in New York. I don't know if the order won't -- the  
6 release order won't be done until we come back on Wednesday,  
7 at which point we would then need a stay until Thursday so we  
8 can go to the judge.

9           In other words, I'm concerned if the New York  
10 prosecutors try to go to the judge tomorrow, he would say this  
11 is premature because there is no release order to be appealed  
12 under 3145.

13           THE COURT: That's true. That is a good point. And,  
14 Mr. Lanza, I hadn't thought of that because it was my  
15 intention not to have the release order until Wednesday  
16 because I wanted to have some clarity on the issue of the  
17 property and at least have the government satisfied with  
18 respect to the equity in the property.

19           MR. LANZA: What I would propose is that we come back  
20 on Wednesday, get the release order finalized, and at that  
21 point I would request a continuance -- or a stay until the  
22 close of business on Thursday.

23           I know one day in detention is too long for somebody  
24 who is, you know, feels they should be released, but we think  
25 that's reasonable understand the circumstances. That will

1 give the judge in New York a one-day window if he wants to  
2 further stay it to intervene.

3 THE COURT: Mr. Wilenchik.

4 MR. WILENCHIK: I have to say, Your Honor, under the  
5 circumstances, although the Court didn't order what I asked, I  
6 feel the Court's order is pretty comprehensive.

7 I don't see any reason to keep him detained based on  
8 their whim of whether they want -- what they want to do. I  
9 know you may disagree with me, but the fact of the matter is  
10 it's his time in jail, not theirs.

11 And what I would say is I don't know what the issue  
12 exactly here even is on the property. That's why I offered  
13 Mr. Lanza to talk directly with his mother who is here.

14 THE COURT: Well, Mr. Wilenchik, it takes more than  
15 that. So I can start reading you a list of what you will have  
16 to prepare.

17 MR. WILENCHIK: Well --

18 THE COURT: I mean, it's -- there's a significant  
19 amount of paperwork that occurs. I know Ms. Chenal suggested  
20 on Friday that Mr. Lanza could consult with her for a few  
21 minutes and it can all be taken care of. That's not exactly  
22 how it works. It's a little more logistically involved in  
23 that. It's not to say it can't be done, but doing it in a day  
24 is pretty short order.

25 MR. WILENCHIK: Your Honor, all I was going to say

1       though is that if you'll permit me to finish that, if I may, I  
2       wasn't trying to quibble with the Court on that.

3               What I was trying to say is that I don't see why the  
4       order that the Court made can't be entered today.

5               THE COURT: I'm not going to enter that order today,  
6       because my order is somewhat conditional. It depends upon the  
7       government being satisfied with the equity in the property.

8               I'm assuming it for purposes of today's hearing.  
9       Mr. Lanza has indicated he has some concerns, but he has  
10      informally allayed some of those concerns. But to give the  
11      government the time to complete the process as reasonable and  
12      also, frankly, you are going to need that time. There's quite  
13      a bit of paperwork you are going to have to fill out to post  
14      that property.

15              It can't happen today. It's possible it could happen  
16      tomorrow.

17              MR. WILENCHIK: I know, but the order, I'm saying,  
18      could happen and the paperwork to post the property would be  
19      post-order or else the order is conditional on that, I assume.

20              THE COURT: I'm not going to sign the order today. I  
21      will sign the order on Wednesday, assuming everything is in  
22      order.

23              Because a significant part of my conclusion is  
24      posting the property as a security for the bond. There are  
25      many components to addressing the risk that is posed. And

1 there is serious risk of flight. I know you have argued that  
2 you don't think he is a flight risk and that the Court should  
3 not even conclude that.

4 But I disagree with you. I conclude he is a flight  
5 risk and a serious one. And my next consideration is whether  
6 there were conditions that could be fashioned that could  
7 reasonably address that risk. And I have concluded that there  
8 are. They're going to include GPS monitoring, surrendering  
9 his passport, not traveling out of the district, not traveling  
10 on private aircraft.

11 MR. WILENCHIK: Yes.

12 THE COURT: Possibly not working at the air field. I  
13 don't have an objection or I'm not suggesting he couldn't work  
14 at Eufora, his office is located there, but not managing  
15 aircraft and posting the property as a security for the bond.

16 So there are many parts of it. And Mr. Constantine  
17 will remain in detention until we can resolve that.

18 MR. WILENCHIK: And if the government, for whatever  
19 reasons, Your Honor, does not -- because these courts,  
20 certainly in their discretion, I guess I hear that if the  
21 government is not satisfied, for whatever their reason, then  
22 we can still argue that position, I assume, then on Wednesday?

23 THE COURT: You can still argue on Wednesday.

24 MR. WILENCHIK: Okay. Because all I'm saying is we  
25 provided an appraisal. If they have questions about the

1 appraisal, that's fair. But I mean I don't know what else we  
2 can do.

3 THE COURT: Well, I gather from Mr. Lanza's remarks  
4 that he is not arguing strongly or suggesting that there are  
5 going to be issues with the property. He's asking for some  
6 time to resolve all of those issues, which I conclude is  
7 reasonable.

8 And, quite frankly, you need some time too. The  
9 Clerk can give you the list of all the things that have to be  
10 completed to post bond and it's not an easy process.

11 MR. WILENCHIK: Thank you, Your Honor.

12 THE COURT: So that is why I didn't think it was  
13 realistic to try to reconvene before Wednesday.

14 MR. WILENCHIK: Okay. I understand. I will get the  
15 information to the Clerk and we will be back on Wednesday.  
16 And I won't personally be, but Carmen will be back, and we can  
17 hopefully get this resolved then.

18 THE COURT: Let us give you a time. I think my  
19 calendar is full in the morning, but we have something in the  
20 afternoon.

21 The difficulty we're having now, it looks like four  
22 o'clock on Wednesday may be the earliest time.

23 All right. Counsel, the two options are either 10:30  
24 in the morning or four o'clock in the afternoon.

25 MR. WILENCHIK: 10:30 or four o'clock.

1 MS. CHENAL: Wednesday, sure, at 10:30.

2 THE COURT: Mr. Lanza, 10:30 or 4:00 were the two  
3 openings on my calendar on Wednesday. And is 10:30 in the  
4 morning going to be sufficient time?

5 MR. LANZA: They both work. In conferring with  
6 Pretrial, I think four o'clock sounds like the better option  
7 for making sure we have enough time to dot the I's and cross  
8 the T's.

9 THE COURT: I agree. It's going to be cutting it  
10 close to try and do it by 10:30 in the morning. We will set  
11 it at 4:00.

12 And Mr. Constantine's family should bring clothing  
13 for him, personal items that he would need, assuming that he's  
14 released from the court -- no, I'm sorry, the government is  
15 going to seek a stay. But they can bring those items anyway  
16 just in case he is released that day. Just so it would be  
17 possible for him to be released.

18 And you have his passport, Mr. Wilenchik. If you  
19 will give it to Ms. Chenal, we can have her surrender it to  
20 the Pretrial Services officer on Wednesday.

21 MR. WILENCHIK: So for clarity purposes only, Your  
22 Honor, two things to understand what you just said. I don't  
23 want to misunderstand it.

24 First of all, you said something about bringing his  
25 clothes and their seeking a stay. Do I understand then that

1 you are going to make a determination by Wednesday? I just  
2 want to be clear, that's all.

3 MR. LANZA: I believe there's two different things  
4 going to happen. First, between now and Wednesday, we're  
5 going to work together to make sure that the bond paperwork is  
6 squared away.

7 MR. WILENCHIK: Right.

8 MR. LANZA: Even assuming it is acceptable by  
9 Wednesday, once it's presented in court, we will then be  
10 moving for a 24-hour stay of the release order; that if  
11 granted, would mean that he could get out no earlier than  
12 Thursday at 5:00 p.m.

13 And we anticipate that between Wednesday and  
14 Thursday, the prosecutors in New York will be going before the  
15 district court judge there to get a further stay which would  
16 require him to stay in detention. And it will be up to the  
17 judge in New York whether to extend the stay beyond the 24  
18 hours we're asking this Court.

19 MR. WILENCHIK: Okay. I understand.

20 The second thing was your Honor said something just  
21 now that I wasn't clear on about perhaps not working around  
22 aircraft or something.

23 Just so I'm again clear on that, as I indicated to  
24 the Court earlier, my personal knowledge is that the office  
25 building where he works and where Eufora is housed is

1 immediately contiguous to a hangar where, although the  
2 operational aircraft -- excuse me -- the aircraft are not  
3 operational, they are there.

4 And if the Court meant that he would not be working  
5 on the airplanes in the sense of, you know, obviously, I get  
6 the idea of flying and all that. I think everybody can be  
7 advised of that. But he has to come to that office to work.  
8 That's near the planes.

9 THE COURT: Right. And I understood that and I  
10 apologize, Mr. Wilenchik, I didn't make myself very clear.

11 MR. WILENCHIK: Okay.

12 THE COURT: What I was trying to say is that I would  
13 like to fashion a condition that he obviously not fly and that  
14 he not be a passenger on a private aircraft.

15 MR. WILENCHIK: Yes. Yes.

16 THE COURT: And that he also not work managing these  
17 aircraft. I didn't mean a restriction on the actual location  
18 because I understood that his office space for Eufora was at  
19 the airport or very close to it.

20 And so I wouldn't restrict him from doing that. But  
21 he has also indicated that perhaps he was going to lose the  
22 position managing these aircraft in any case and a couple of  
23 partners have withdrawn.

24 And so I think the wiser course of action is to pull  
25 him away from any involvement managing aircraft and working



1 with the aircraft, but that he could still work at his Eufora  
2 office space.

3 MR. WILENCHIK: I mean personally, I don't see any  
4 issue there with him managing and scheduling and things like  
5 that, but whatever the Court wants is fine. I just want to  
6 point out I don't think that is --

7 THE COURT: All right. I understand.

8 MR. WILENCHIK: Yes.

9 THE COURT: So we will reconvene Wednesday at four  
10 o'clock.

11 And Mr. Wilenchik and Ms. Chenal, if you'll work with  
12 Mr. Lanza.

13 MR. WILENCHIK: Yes.

14 THE COURT: You can come and approach the Clerk when  
15 we are finished. She can give you the listing of all the  
16 forms that need to be completed for this process. And then we  
17 will reconvene on Wednesday and we will go from there.

18 MR. WILENCHIK: Thank you, Your Honor.

19 MR. LANZA: Thank you, Your Honor.

20 THE COURT: Okay.

21 (Proceedings adjourned at 4:24 p.m.)

22 \* \* \*

C E R T I F I C A T E

I, ELIZABETH A. LEMKE, court-approved transcriber,  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.

DATED at Phoenix, Arizona, this 18th day of November,  
2013.

s/Elizabeth A. Lemke  
ELIZABETH A. LEMKE